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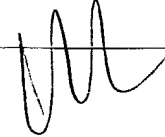
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,179	05/11/2001	John P. Erspamer	1313/1G996US2	7219
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DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			EXAMINER PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER

3743

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/854,179	Applicant(s) ERSPAMER ET AL. 	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Response to Arguments

In view of the appeal brief filed on July 13th, 2004, PROSECUTION IS HEREBY REOPENED.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 7, 24 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Gore et al. US Patent No. 4,194,041. Referring to claim 1, Gore discloses a waterproof laminate that comprises a unitary absorbent core having a basis weight of about 75 gsm or greater, comprising a fibrous absorbent layer having an upper fluid receiving surface and a lower surface with a hydrophobic vapor-transmissive moisture barrier integral with the lower surface of the absorbent layer.

Referring to claim 3, Gore discloses an apparatus wherein the hydrophobic moisture barrier comprises a hydrophobic material which at least partially coats the fibers of the lower surface of the absorbent layer.

Referring to claim 6, Gore discloses an apparatus wherein the core has a basis weight of from about 80 gsm to about 1000 gsm.

Referring to claim 7, Gore discloses an apparatus wherein the ore has a basis weight of from about 100 gsm to 500 gsm.

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Referring to claim 24, Gore discloses an apparatus wherein the moisture barrier has a structure which substantially is fibers coated with hydrophobic material.

Referring to claim 26, Gore discloses an apparatus that comprises a liquid pervious top sheet and a unitary absorbent core.

Referring to claim 29, Gore discloses a waterproof laminate comprises a unitary absorbent core having a basis weight of about 75 gsm or greater comprising a fibrous absorbent layer having an upper fluid receiving surface and a lower surface with a hydrophobic vapor transmissive moisture barrier integral with the lower surface of the absorbent layer comprising a fibrous absorbent layer having upper and lower surface and applying to the lower surface of the fibrous absorbent layer a hydrophobic material which at least partially coats at least some of the fibers of the lower surface of the absorbent layer.

Referring to claim 43, Gore discloses an apparatus wherein the moisture barrier produced has a structure which at least partially coats the fibers at the surface of the absorbent layer with hydrophobic material.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gore et al. US Patent No. 4,194,041 in view of Graff et al. US Patent Pub. No. 2002/0026166. Referring to claims 2 and 30, Gore discloses the applicant's

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invention as claimed with the exception of providing an absorbent layer that comprises natural fibers, synthetic fibers or a mixture thereof. Graff discloses a unitary absorbent layer that does provide an absorbent layer that comprises natural fibers, synthetic fibers or a mixture thereof. Therefore it would have been obvious to modify Gore's invention by providing an absorbent layer that comprises natural fibers, synthetic fibers or a mixture thereof in order to prevent leakage.

Referring to claims 4 and 31, Gore discloses the applicant's invention as claimed with the exception of providing a hydrophobic material that is natural or synthetic polymer. Graff discloses a unitary absorbent layer that does provide a hydrophobic material that is natural or synthetic polymer. Therefore it would have been obvious to modify Graff's invention by providing a hydrophobic material that is natural or synthetic polymer in order to prevent leakage.

Referring to claim 28, Gore discloses the applicant's invention as claimed with the exception of providing an article that is an infant disposable diaper, a training pant, an absorbent surgical pad, an adult incontinence device, a sanitary napkin, a pantiliner or a feminine hygiene pad. Graff discloses a unitary absorbent layer that does provide an article that is an infant disposable diaper, a training pant, an absorbent surgical pad, an adult incontinence device, a sanitary napkin, a pantiliner or a feminine hygiene pad. Therefore it would have been obvious to modify Gore's invention by providing an infant disposable diaper, a training pant, an absorbent surgical pad, an adult incontinence device, a sanitary napkin, a pantiliner or a feminine hygiene pad in order to prevent leakage.

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Claims 5, 8, 9 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Brisebois et al. US Patent No. 6,312,416. Referring to claims 5 and 32, Gore discloses the applicant's invention as claimed with the exception of providing a core that comprises 5 to about 90 percent by weight of SAP. Brisebois discloses a thin sanitary napkin capable of controlled deformation when in use that does provide a core that comprises 5 to about 90 percent by weight of SAP. Therefore it would have been obvious to modify Gore's invention by providing a core that comprises 5 to about 90 percent by weight of SAP in order to prevent leakage.

Referring to claims 8 and 9, Gore discloses the applicant's invention as claimed with the exception of providing a core that has a density of from about 0.03 to about 0.7 g/cc. Brisebois discloses a thin sanitary napkin capable of controlled deformation when in use that does provide a core that has a density of from about 0.03 to about 0.7 g/cc. Therefore it would have been obvious to modify Gore's invention by providing a core that has a density of from about 0.03 to about 0.7 g/cc in order to prevent leakage.

Claims 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gore et al. US Patent No. 4,194,041 in view of Davis et al. US Patent No. 6,316,687. Gore discloses the applicant's invention as claimed with the exception of providing a core having a hydrohead of 30 mm or more. Davis discloses a disposable diaper having a humidity transfer region, breathable zone panel and separation layer that does provide a core having a hydrohead of 30 mm or more. Therefore it would have been obvious to modify Gore's invention by providing a core having a hydrohead of 30 mm or more in order to prevent leakage.

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Claims 13, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Ferguson et al. US Patent No. 4,341,217. Referring to claims 13, 14, and 15, Gore discloses the applicant's invention as claimed with the exception of providing an absorbent core that has a strikethrough of 0.7 g or less. Ferguson discloses barrierless disposable absorbent article having an absorbent core encased in a homogeneous outer wrap that the absorbent has both a strikethrough time of less than 80 seconds and a bleedthrough quantity of less than 0.075 grams. The strikethrough and the bleedthrough in the reference (Ferguson) is equivalent to the applicant's strikethrough. It is obvious to one in the ordinary skill of the art that an absorbent core that has a strikethrough of 0.7 g or less be used in Gore's invention in order to prevent the absorbent core from leaking or breaking.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore et al. US Patent No. 4,194,04 in view of Ahr et al. US Patent No. 5,876,393. Gore discloses the applicant's invention as claimed with the exception of providing a core having an air permeability of 18 cube meter/min/square meter. Ahr discloses a disposable absorbent article with selectively expandable or inflatable components that does provide a core having an air permeability of 18 cube meter/min/square meter. Therefore it would have been obvious to modify Gore's invention by providing a core having an air permeability of 18 cube meter/min/square meter in order to prevent leakage.

Claims 17, 18, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Keuhn Jr. et al. US Patent No. 6,238,379. Gore discloses the applicant's invention as claimed with the exception of stating that the absorbent core has a water transmission rate of 3000 g/m²/24 hr or greater.

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Keuhn discloses an absorbent article with increased wet breathability that does state that the absorbent core has a water transmission rate of $3000 \text{ g/m}^2/24 \text{ hr}$ or greater (see column 10 lines 30-45). It is obvious to one in the ordinary skill of the art that an absorbent core has a water transmission rate of $3000 \text{ g/m}^2/24 \text{ hr}$ or greater in Gore's invention in order to provide a stronger absorbent core.

Claims 21, 22, 23, 46, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Roslansky et al. US Patent No. 6,371,950. Gore discloses the applicant's invention as claimed with the exception of stating that the absorbent core that has a barrier effectiveness value of 75 mm or greater. Roslansky discloses an incontinence article for males that does state that the absorbent core that has a barrier effectiveness value of 75 mm or greater. It is obvious to one in the ordinary skill of the art that an absorbent that has a barrier effectiveness value of 75 mm or better be used in Gore's invention in order prevent the absorbent core from leaking.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore et al. US Patent No. 4,194,041 in view of Depner et al. US Patent No. 6,624,341. Gore discloses the applicant's invention as claimed with the exception of providing a microporous backsheet. Depner discloses a breathable backsheet design for disposable absorbent articles that does provide a microporous backsheet. Therefore it would have been obvious to modify Gore's invention by providing a microporous backsheet in order to prevent leakage.

Claims 25, 33, 34, 35, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Hoey Us Patent No. 4,000,028. Referring to claim 25, Gore discloses the applicant's invention as claimed

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with the exception of providing a moisture barrier that has a reticulated remnant of a barrier material emulsion extending from the lower surface region of the absorbent layer to form an outer reticulated foam barrier. Hoey discloses a method of making absorbent pads that does provide a moisture barrier that has a reticulated remnant of a barrier material emulsion extending from the lower surface region of the absorbent layer to form an outer reticulated foam barrier in order to prevent leakage.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore Us Patent No. 4,194,041 in view of Rezai et al. US Patent No. 5,859,074. Gore discloses the applicant's invention as claimed with the exception of providing an emulsion polymer that includes a hydrophobicity agent. Rezai discloses a treating interparticle bonded aggregates with latex to increase flexibility of porous, absorbent macrostructures that does provide an emulsion polymer that includes a hydrophobicity agent. Therefore it would have been obvious to modify Gore's invention by providing an emulsion polymer that includes a hydrophobicity agent in order to prevent leakage.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore et al. US Patent No. 4,914,041 in view of Sawyer et al. US Patent No. 6,664,437. Gore discloses the applicant's invention as claimed with the exception of providing a fibrous absorbent layer that is nonwoven produced by an airlaid process. Sawyer discloses a layered composites for personal care products that does provide a fibrous absorbent layer that is nonwoven produced by an airlaid process. Therefore it would have been obvious to modify Gore's invention by providing a fibrous absorbent layer that is nonwoven produced by an airlaid process in order to prevent leakage.

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Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gore et al. US Patent No. 4,194,041 in view of Yong et al. Patent No. WO 02/11655 A2. Gore discloses the applicant's invention as claimed with the exception of stating that the absorbent core comprises three or more fibrous strata. Yong discloses high-strength stabilized absorbent article that does state that the absorbent core comprises three or more fibrous strata. It is obvious to one in the ordinary skill of the art that an absorbent core that comprises three or more fibrous strata be used in Gore's invention in order to provide a stronger absorbent core.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rezai et al. US Patent No. 5,859,074 as applied to claim 36 above, and further in view of Paul et al. US Patent No. 6,503,525. Rezai discloses the applicant's invention as claimed with the exception of stating that the process comprises providing a tissue having a base weight of less than about 30 gsm. Paul discloses an absorbent article which maintains or improves skin health that does provide a tissue having a base weight of less than about 30 gsm. It is obvious to one in the ordinary skill of the art that a tissue that has a base weight of less than about 30 gsm be used in Rezai's invention in order to provide a stronger absorbent article.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Graef et al. US Patent No. 2002/0007169 A1. Gore discloses the applicant's invention as claimed with the exception of stating that the fibrous stratum contains fifty percent or more by weight of eucalyptus fibers. Graef discloses an absorbent composite having improved surface dryness that does state that the fibrous stratum contains fifty percent or more by weight of eucalyptus fibers. It is

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obvious to one in the ordinary skill of the art that a fibrous stratum contains fifty percent or more by weight of eucalyptus fibers be used in Gore's invention in order to provide a stronger absorbent core.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Woon et al. US Patent No. 2002/0019614 A1. Gore discloses the applicant's invention as claimed with the exception of stating that the absorbent core comprises one or more strata which are multi-bonded with an emulsion polymer binder and thermal bio-component fiber binder. Woon discloses an absorbent articles having improved performance that does state that the absorbent core comprises one or more strata which are multi-bonded with an emulsion polymer binder and thermal bio-component fiber binder. It is obvious to one in the ordinary skill of the art that an absorbent core that comprises one or more strata which are multi-bonded with an emulsion polymer binder and thermal bio-component fiber binder be used in Gore's invention in order to provide a stronger absorbent core.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Roe et al. US Patent No. 6,384,296. Gore discloses the applicant's invention as claimed with the exception of stating that the foamed constituent is a high internal phase emulsion (HIPE) foam. Roe discloses a disposable article having a responsive system including an electrical actuator that does state that the foamed constituent is a high internal phase emulsion (HIPE) foam. It is obvious to one in the ordinary skill of the art that a foam that is a high internal phase emulsion (HIPE) foam be used in Gore's invention in order to provide a stronger absorbent article.

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Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Graef et al. US Patent No. 6,525,240. Gore discloses the applicant's invention as claimed with the exception of stating that the nonwoven structure comprises about 50 to about 99 percent by weight of natural fibers, synthetic fibers, or a mixture thereof. Graef discloses an absorbent article containing unitary stratified composite that does state that the nonwoven structure comprises about 50 to about 99 percent by weight of natural fibers, synthetic fibers, or a mixture thereof. It is obvious to one in the ordinary skill of the art that a nonwoven structure comprises about 50 to about 99 percent by weight of natural fibers, synthetic fibers, or a mixture thereof be used in Gore's invention in order to provide a stronger absorbent core.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gore US Patent No. 4,194,041 in view of Shirayanagi et al. US Patent No. 5,366,792.

Gore discloses the applicant's invention as claimed with the exception of stating that the material or structure has been produced in a unitary process. Shirayanagi discloses a laminated three layer non-woven fabric with improved interface and process for producing the same that does state that the material or structure has been produced in a unitary process. It is obvious to one in the ordinary skill of the art that the material or structure used in Gore's invention be produced in a unitary process in order to provide a strong absorbent core.

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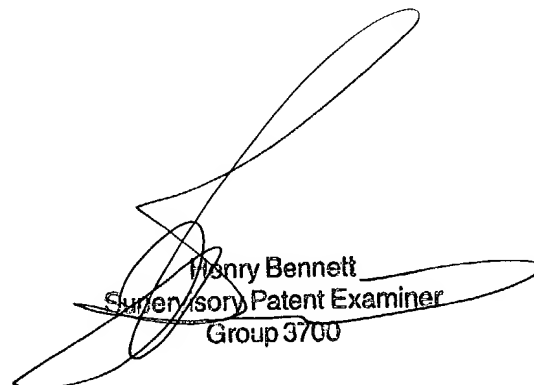
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463.

The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP
October 1st, 2004



Henry Bennett
Supervisory Patent Examiner
Group 3700